

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 923 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

JAGDISCHANDRA VITHALDAS SAGAR

Appearance:

Mr. MA BUKHARI APP for Petitioner
MR SATISH R PATEL for Respondent No. 1, 3, 4, 5
ABATED for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

Date of decision: 18/03/99

ORAL JUDGEMENT

The learned Additional Sessions Judge, Baroda decided Sessions Case No. 129 of 1991 on 4.7.1992 in favour of the respondents-accused by acquitting all of them for the offence under sec. 304B, 498A and 306 of IPC and under sec. 4 of the Dowry Prohibition Act. It

is that judgment and order which is challenge by the State of Gujarat in this appeal. The respondents are, the husband, the father in law, mother in law and sisters in law, respectively of deceased Kalpana, who died on 29.2.1990 at about 9.00m at Tilakwada village by consuming poison. It may be stated that the present appeal as far as respondent no. 2 is concerned, is abated on account of his death by virtue of the order dated 1.11.1993 passed by this Court.

The prosecution, in order to establish the charge, examined Vijaybhai (PW-1, Ex. 12) who is complainant and brother, Lilavatiben (PW-2, Ex. 13) the mother, Naranbhai (PW-4, Ex. 21) the brother in law of the deceased. The defence in this case also led evidence by examining DW-1 Shardaben Ex. 29, the grand mother (mother's mother) of the deceased and DW-2 Lalubhai Hiralal Ex. 26 and DW-3 Somabhai Manabhai Ex. 28, the landlords of accused no. 1. Vijaybhai PW-1 is the brother of the deceased and also a rikshaw driver and plying his rickshaw in Ahmedabad city, in his statement stated that the marriage of the deceased and accused no. 1 had taken place on 3.3.1986. The accused no. 1 is serving in the Agricultural Department at Tilakwada of Baroda district. That out of the wed-lock, two children were borne and, at present both the children are with the accused. According to him, the incident had taken place on 29.4.1990 when at about 1.00am or 1.30am his uncle Natvarbhai, who is also relative of the accused came in Ambassador car with other relative of the accused and informed him that the condition of his sister was serious. The complainant as well as Lilavatiben (PW-2) and Naranbhai (PW-4) went in a car to Tilakwada where they found the dead body of the deceased. He filed a complaint to the police. According to him, Kalpana had come to their house two to four times after the marriage and no complaint was made regarding any ill-treatment. The deceased also came to their house for her first delivery and after three months, she was sent back with her in-laws. However, she again came to their house after 3 - 4 months and at that time, she made a complaint that her sister-in-laws as well as mother in law are taunting her by stating that she has not brought Jiyana and that her parents are beggars. She also made a complaint regarding beating and, that she was also not allowed to drink milk. According to the complainant, deceased died because of the cruelty showered on her. Certain contradictions have been brought out regarding the information received by him about the condition of the deceased and that going to village Gujarava to inform his mother PW-2, and reaching straight to village

Tilakwada Police Station and writing letters to one Natvarlal regarding the condition of the deceased etc. However, in our opinion, the same are not relevant, and therefore, we are not mentioning the same in detail, however, one thing is clear that the complainant has given so many details in his evidence for the first time which are not a part of his complaint. However, it is clear from reading his evidence that the accused has sent Ambassador Car to the complainant for the purpose of calling them at Tilakwada. According to this witness, Jiyana is a gift of cradle and pair of cloth as per the customs to be given to a girl by her parents after her first delivery. According to him, that custom is prevailing in their caste. He has denied the suggestion that the accused have not demanded the Jiyana from them. Finally, the complainant has stated that he has not stated that the deceased Kalpanaben told him that her sister in law was beating her after pulling her hair. Lilavatiben (PW-2) mother of the deceased, has more or less stated the same story as stated by the complainant. Regarding the ill-treatment, she has stated that her brother in law Naranbhai informed her that the deceased was beaten on two occasions by pulling her hair and deceased told that to Nayanaben, who is wife of Naranbhai as well as the sister of the deceased. She has been contradicted on this statement with her police statement where she has not stated this beating part. Similarly, Naranbhai (PW-4), who is the brother in law of the deceased, in his evidence has more or less supported the say of the complainant. However, he has given inconsistent version by stating that when they reached Tilakwada, deceased Kalpana not only expired, but her Post Mortem was also completed. That is not the say of the complainant. He has deposed about the ill-treatment given by the mother in law as well as sister in law to the deceased and, according to him, the deceased told about the ill-treatment to his wife Nayanaben, the sister of the deceased. Certain contradictions have been brought on record by confronting him with his police statement.

Reading the evidence of the PWs, in our opinion, their evidence do not inspire confidence. Their evidence are quite contradictory and inconsistent. They have made number of improvement in their evidence quite contrary to their police statement. Lilavatiben is contradicted regarding the allegation of beating by pulling hairs. Similarly, Naranbhai who passed on this information of beating to Vijaybhai and Lilavatiben is not corroborated by any one, as Nayanaben, his wife to whom deceased told about beating by pulling hair is not examined. Even if, the story put forward by them is

believed, it becomes clear that initially for a period of 3 to 4 years, no ill-treatment was afforded to the deceased by any of the accused. There was no demand of dowry. The only allegation made by the PWs is with respect to Jiyana. It is, therefore, alleged that as the deceased has not brought proper Jiyana, she was constantly taunted by her mother in law as well as sister in law. Except the bare allegations, the prosecution has not proved the case even on this aspect beyond the reasonable doubt. On the contrary, the defence have examined three witnesses, i.e. DW-2- Lallubhai Hiralal and DW-3- Somabhai Manabhai respectively, who are the landlords at village Netrang and village Wankal where the accused no. 1 was serving. In their evidence, they have clearly stated that the deceased and accused no. 1 were staying in their house very happily without there being any quarrel between them. It is also stated by them that their parents and other relatives were not coming to stay with them. The evidence of DW-1-Shardaben Chhotalal is a last nail on the coffin of the prosecution case. She is, in fact, grand mother (mother's mother) of the deceased, who resides just opposite to the house of the accused at village Tilakvada. If there was any complaint to the deceased by the accused, the deceased being the grand-daughter, will certainly go to Shardaben. Shardaben in her evidence, has stated in no unequivocal term and that no any quarrel had taken place on account of Jiyana. She has also stated that it is not obligatory in their caste to give anything in Jiyana. She has remained consistent in her evidence in the cross-examination also. In our opinion, the evidence of defence witness Shardaben completely destroyed the case of the prosecution. Even apart from the evidence of defence witnesses, we see hardly any evidence on record which would prove the ingredients of cruelty under sec. 498A, 304B and/or under sec. 306 of IPC and section 4 of the Dowry Prohibition Act. Since none of the ingredients of Section 304 B as well as Sec. 4 of the Dowry Prohibition Act are satisfied, in our opinion, the learned Trial Judge was perfectly justified in passing the order of acquittal in favour of the accused. Suffice it to say that we are in complete agreement with the reasoning of the learned Trial Judge. There being no substance in the appeal, the same is dismissed hereby. Bail bonds stand cancelled.

(K. R. VYAS, J.)

(A.M. KAPADIA, J.)

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